



Reply to  
Attn. of: SP-02-06

DEC 19 2001

Subject: Late Payment Charges in Contracts Between Food Service Management Companies and School Food Authorities

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas,  
(Child Nutrition Programs) Missouri ED, Montana OPI,  
Nebraska ED, North Dakota,  
South Dakota, Utah, Wyoming

We have been advised that a situation has arisen concerning late payment charges in contracts between food service management companies (FSMCs) and school food authorities (SFAs). As we understand the issue, at least one State has expressed concern that such charges create a prohibited cost plus percentage of cost contract.

Based on the information provided, the late payment charges do not create a cost plus percentage of cost contract, but represent an unallowable cost pursuant to Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (Attachment B, 7) and OMB Circular A-122, Cost Principles for Non-Profit Organizations (Attachment B, 3). As an unallowable cost, SFAs subject to late payment charges cannot charge these costs to the nonprofit school food service account. This prohibition extends to all Federal and nonfederal funds contained within the nonprofit school food service account, not just Federal reimbursement payments. Therefore, school food authorities must use other sources of funds to pay late charges.

While we can address the issue of late payments fees within the context of Federal contract and cost principles, we cannot address any restrictions that may be imposed by States on the allowability of public agencies to incur late payment charges. Such issues must be resolved with the appropriate State agencies.

If you have any questions concerning this issue, please let us know.

*Darlene Sanchez*

*for*  
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Acting Regional Director  
Child Nutrition Programs